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 14 (Local Counsel)

15 UNITED STATES DISTRICT COURT  
 16 DISTRICT OF NEVADA  
 17

18 PHASE II CHIN, LLC and LOVE &  
 19 MONEY, LLC (formerly dba O.P.M.L.V.,  
 LLC),

20 Plaintiffs,

21 v.

22 FORUM SHOPS, LLC, FORUM  
 23 DEVELOPERS LIMITED PARTNERSHIP,  
 24 SIMON PROPERTY GROUP LIMITED  
 PARTNERSHIP, SIMON PROPERTY  
 GROUP, INC., CAESARS PALACE CORP.,  
 and CAESARS PALACE REALTY CORP.

25 Defendants,

26 AND RELATED ACTIONS.  
 27  
 28

Case No. 2:08-cv-00162-JCM-GWF

**PLAINTIFF LOVE & MONEY, LLC's  
 MOTION TO COMPEL DISCOVERY  
 FROM PURE MANAGEMENT GROUP**

1 Plaintiff LOVE & MONEY, LLC , by its attorney, Louren Oliveros of Gorence & Oliveros,  
2 P.C., pursuant to Fed. R. Civ. P. 45(c)(2)(B)(i), hereby moves this court to order Pure Management  
3 Group to produce discovery in response to a subpoena that was properly served upon it. As  
4 grounds, Plaintiff Love & Money, LLC states as follows:

#### 5 I. PROCEDURAL BACKGROUND

6  
7 1. Plaintiff Love & Money, LLC issued a subpoena to Pure Management Group on  
8 September 16, 2009.

9 2. The subpoena was served upon Diane Peterson of Pure Management Group on  
10 September 17, 2009. Ms. Peterson was a person authorized to accept service on behalf of Pure  
11 Management Group. The subpoena and executed return of service is attached as Exhibit A to this  
12 Memorandum.

13 3. The subpoena required compliance by October 8, 2009, 21 days after the service of  
14 the subpoena.

15 4. The location of the production occurred within the limits of Fed.R.Civ.P.  
16 45(c)(3)(A)(ii).

17  
18 5. Pure Management Group did not file a motion objecting to the subpoena, nor did  
19 it file a motion to quash the subpoena before the deadline for compliance, October 8, 2009, or  
20 within 14 days after the subpoena was served.

21 6. Likewise, Pure Management Group did not file a motion for a protective order  
22 regarding claimed privileged or commercial information that might be revealed by responding to  
23 the subpoena.

24  
25 7. A month after being served with the subpoena, on October 19, 2009, Branden Roos,  
26 an attorney representing Pure Management Group, faxed a letter to C. Stanley Hunterton regarding  
27 the subpoena. In the letter, Mr. Roos indicated that compliance with the subpoena would impose  
28

1 an undue burden and expense on Pure Management Group and that it would divulge commercial  
2 information. Mr. Roos' letter is attached as Exhibit B.

3 8. On October 22, 2009, Mr. Roos communicated to undersigned counsel Louren  
4 Oliveros that, in addition, to the arguments stated in his letter, he believed that the documents  
5 sought were irrelevant. Additional correspondence from Mr. Roos maintained this position.

6 9. Pure Management Group conducted one search for electronic documents only and  
7 produced no documents as a result of that search.

8 10. Plaintiff Love & Money, LCC has made a good faith effort to resolve this discovery  
9 issue without litigation.

## 11 II. LEGAL ARGUMENT

12 A. The Court should order production of all documents requested in the subpoena  
13 because Pure Management Group has failed to timely file an objection.

14 Fed. R. Civ. Procedure 45 requires timely compliance with a properly served subpoena.  
15 Under Fed.R.Civ. P. 45(c)(3)(A), a court may quash or modify a subpoena upon a "timely  
16 motion." A motion is timely under Fed.R.Civ.P. 45(c)(2)(B) when:

17 A person commanded to produce documents or tangible things or to permit  
18 inspection may serve on the party or attorney designated in the subpoena a written  
19 objection to inspecting, copying, testing or sampling any or all of the materials or  
20 to inspecting the premises – or to producing electronically stored information in the  
21 form or forms requested. The objection *must* be served before the earlier of the  
time specified for compliance or 14 days after the subpoena is served. If an  
objection is made, the following rules apply:

22 (i) At any time, on notice to the commanded person, the serving party may move  
23 the issuing court for an order compelling production or inspection.

24 (ii) These acts may be required only as directed in the order, and the order must  
25 protect a person who is neither a party nor a party's officer from significant  
expense resulting from compliance.

26 Emphasis added.

1 Pursuant to Fed. R. Civ.P. 45(c)(2)(B)(i), Plaintiff Love & Money, LLC moves this court  
2 for an order compelling Pure Management Group to produce all documents responsive to the  
3 subpoena served upon them in this matter. As grounds, Plaintiff Love & Money, LLC states as  
4 follows:

5 Under Fed. R. Civ. P. 45(a), a party can obtain a subpoena for the production of documents  
6 and the deposition of a non-party. A party seeking to enforce a subpoena must seek a court order  
7 directing compliance. *Pennwalt Corp. v. Durand-Wayland, Inc.*, 708 F.2 492, 494 n.5 (9<sup>th</sup> Cir.  
8 1983). As such, Plaintiff Love & Money, LLC seeks to enforce the subpoena that was properly  
9 served on Pure Management Group.  
10

11 A party objecting to such a subpoena must do so in writing within fourteen days of service.  
12 Fed. R. Civ.P. 45(c)(2)(B). Pure Management Group, a non-party, has failed to timely file a  
13 motion objecting to the subpoena. The failure to file such a motion precludes Pure Management  
14 Group from contesting the subpoena. As such, Pure Management Group has no valid legal grounds  
15 to avoid production and the Court should order Pure Management Group to produce all documents  
16 requested in the subpoena forthwith.  
17

18 B. The Court should order production of all documents requested in the subpoena  
19 because the documents requested are discoverable.

20 The Federal Rules of Civil Procedure create a “broad discovery right” because “access to  
21 relevant facts serves the integrity and fairness of the judicial process by promoting the search for  
22 the truth.” *Shoen v. Shoen*, 5 F.3d 1289, 1292 (9<sup>th</sup> Cir. 1993).

23 Pure Management Group contends that compliance would 1) reveal commercial information,  
24 2) result in an undue burden and expense and 3) that the documents requested are irrelevant. Pure  
25 Management Group’s contentions are unsupported under the circumstances. Plaintiff Love &  
26 Money, LLC attempted to resolve this discovery issue without court intervention and address the  
27 claims of Pure Management Group regarding difficulties it perceived it would face in order to  
28

1 comply. Plaintiff also attempted to explain the relevance of the documents requested. After these  
2 discussions, Pure Management Group ran one electronic search which they claim had “no hits”.  
3 Pure Management Group produced no other documents and appears to have conducted no other  
4 searches. Plaintiff Love & Money, LLC will address each of Pure Management Group’s arguments  
5 in turn.

6  
7 First, Plaintiff Love & Money, LLC denies that compliance with the subpoena would reveal  
8 commercial information. Under Fed. R. Civ. P. 26(c)(1)(G), any person from whom discovery is  
9 sought may move for a protective order to protect “a trade secret or other confidential research,  
10 development, or commercial information.” Pure Management Group, however, has not indicated  
11 what information would fall under this category, nor have they filed a motion for a protective order.  
12 “To protect a person subject to or affected by a subpoena, the issuing court may, *on motion*, quash  
13 or modify the subpoena....” See Fed.R.Civ.P.45(3)(B)(emphasis added). Further, Pure Management  
14 Group has failed to comply with Fed. R. Civ. P. 45(d)(2)(A)(ii) which requires that Pure  
15 Management Group provide information that would enable Plaintiff to assess a claim of privilege  
16 or protection. At a minimum, pursuant to 26(b)(5)(A)(ii), Pure Management Group should be  
17 required to produce all documents responsive to the subpoena and to provide any information to the  
18 Plaintiff identifying and describing all documents that might be protected as commercial  
19 information. Pure Management Group has failed to produce any documents or information  
20 describing the documents being withheld. As such, the Court should order Pure Management Group  
21 to produce all documents requested in the subpoena forthwith.

22  
23 Second, Plaintiff Love & Money, LLC denies that compliance with the subpoena would  
24 result in an undue burden and expense for Pure Management Group. Upon a showing of “good  
25 cause, the district court may issue any protective order ‘which justice requires to protect a party or  
26 person from annoyance, embarrassment, oppression, or undue burden or expense.’” *Rivera v.*  
27  
28

1 *NIBCO, Inc.*, 364 F.3d 1057, 1063 (9<sup>th</sup> Cir. 2004)(quoting Fed.R.Civ.P. 26(c)). “The burden is upon  
2 the party seeking the order ‘to show good cause’ by demonstrating the harm or prejudice that will  
3 result from the discovery.” *Rivera*, 364 F.3d at 1063 (quoting *Phillips ex rel. Estates of Byrd v.*  
4 *General Motors Corp.*, 307 F.3d 1206, 1210-11 (9<sup>th</sup> Cir. 2002)). It is unclear what precisely will  
5 cause an undue expense or unreasonable amount of time for Pure Management Group in order for  
6 it to effectuate compliance. The subpoena merely requests documents and electronic information  
7 that should be easily obtained and copied. Pure Management Group has not met its burden  
8 establishing that compliance would indeed result in an undue expense or that the search would result  
9 in an unreasonable burden. As such, the Court should order Pure Management Group to produce  
10 all documents requested in the subpoena forthwith.

12 Third, Plaintiff Love & Money, LLC contends that all documents requested are directly  
13 relevant to the claims and defenses in this matter. The right to discovery is not unlimited, it must  
14 be “‘relevant to the subject matter involved in the pending action’ or ‘reasonably calculated to lead  
15 to the discovery of admissible evidence.’” *Shoen*, 5 F.3d at 1292 (quoting Fed.R.Civ.P. 26(b)(1)).  
16 Plaintiff contends that the information requested is directly relevant to defend against the allegations  
17 asserted in the Second Amended Counterclaim, Doc. 140, and to support the allegations in  
18 Plaintiff’s Complaint, Doc.1. The subpoena, Exhibit A, has requested documents related to security  
19 at Pure night club, incidents at Pure night club, and communications related to O.P.M.L.V./Poetry  
20 and the claims in this lawsuit. The relevance to this lawsuit could not be more direct. The  
21 information sought is directly relevant to refute Defendant Forum’s contention in the Second  
22 Amended Counterclaim that Poetry night club was  
23

25 operated in a manner that, among other things, creates an environment that  
26 results in rowdy and unruly behavior, such as public drunkenness, vomiting  
27 in mall public areas, shouting obscenities in mall public areas, urinating in  
28 mall public areas, fighting damaging property in mall public areas, and  
assault and battery of customers and security personnel, use of illegal or  
controlled substances and otherwise engaging in disorderly behavior

1 requiring the repeated attention of security personnel and the Las Vegas  
2 Metropolitan Police Department.

3 Doc. 140, ¶ 7. The Pure night club was an establishment similar to Poetry night club, but did not  
4 attract a majority ethnic or black clientele as did Poetry. Pure night club, however, was located on  
5 the same premises as Poetry night club and maintained similar or the same hours of operation.  
6 Caesars is the landlord for The Forum Shops pursuant to the terms of the Ground Lease, and is  
7 presumably the landlord of Pure. The operation of Pure, the conduct of its patrons, and the treatment  
8 of Pure by Caesars are critical in the analysis of what types of behavior Caesars considered “rowdy  
9 and unruly” and whether Pure patrons required “repeated attention of security personnel and the Las  
10 Vegas Police Department”. Further, this evidence is relevant to support Plaintiff Love & Money’s  
11 contention that the Defendants’ claimed reasons for the removal of Poetry, *i.e.*, the increase in  
12 incidents of violence, unruly and rowdy behavior caused by Poetry patrons, is pretextual. For these  
13 reasons, the documents and information requested are relevant and essential to the defense of the  
14 counterclaim and to the prosecution of Plaintiff’s claims.  
15

16 Additionally, the information sought is directly relevant to the treatment of Plaintiff by the  
17 Defendants. The lawsuit alleges racial discrimination and harassment on the part of the Defendants.  
18 The discrimination can be demonstrated by showing that others, similarly situated were treated  
19 differently. Here, Plaintiff contends that Pure night club, a club that dwarfs the maximum capacity  
20 at Poetry by well over 2,000, was responsible for its share of after-hours incidents in the public areas  
21 of The Forum Shops and that the Defendants did not hold Pure night club responsible or incidents  
22 in The Forum Shops and did not attempt to shut Pure night club down as they did O.P.M./Poetry  
23 night club. For these reasons, the information requested in the subpoena is relevant and necessary  
24 in order for the Plaintiff to make this showing.  
25

26 The information sought is also directly relevant to the Defendants’ relationship with Pure  
27 Management Group, the degree of influence that the Defendants had or sought to have over Pure  
28

1 Management Group and whether the Defendants used their influence to obtain support from Pure  
2 Management Group or other businesses in Caesars Palace or the Forum Shops to remove  
3 O.P.M.L.V./Poetry night club from the premises of Caesars Palace. It is further relevant to  
4 understand whether Pure Management Group or executives operating Pure night club were hostile  
5 to or discriminated against black Patrons of O.P.M./Poetry and whether such conduct was known  
6 to and tolerated by the Defendants.  
7

8 Finally, the Complaint alleges that the Defendants worked in concert to interfere with  
9 Plaintiff's business and discriminate against Plaintiff's African American patrons. See Complaint,  
10 Doc. 1, generally, and at ¶ 90. Plaintiff also alleges that the Defendants "acted in concert, directly  
11 or through common agents, to exert control over the other defendants, and through such dominion  
12 and control, furthered the unlawful objections of i) improperly invoking remedies under the Lease,  
13 including termination of the Lease; (ii) intentionally disrupting the contractual relationships between  
14 Chinois and O.P.M.L.V., on the one hand, and actual and prospective patrons of Chinois and  
15 O.P.M.L.V. on the other..." Doc. 1, ¶ 98. Discovery has revealed that on more than one occasion,  
16 the Defendants met with Pure Management employees or executives regarding the "problem" posed  
17 by O.P.M/Poetry night club. Pure Management Group is or may be an agent of Defendant Caesars  
18 Palace. The documents and information requested are relevant and essential for the Plaintiff to show  
19 the extent to which the Defendants worked together and to show the extent to which the Defendants  
20 worked with Pure Management Group, to interfere with O.P.M.L.V/Poetry's business and remove  
21 O.P.M.L.V/Poetry from The Forum Shops at Caesars.  
22

23 As set forth above, all documents requested are relevant under Fed. R. Civ. P. 25(b)(1). Due  
24 to their violations of the Federal Rules of Civil Procedure, Plaintiff Love & Money, LLC, requests  
25 that this Court order Pure Management Group to comply with the subpoena and produce the  
26 requested documents to counsel for Plaintiff Love & Money forthwith.  
27  
28



1  
2 Dated this 25<sup>th</sup> day of November, 2009.

3 Respectfully submitted,

4 GORENCE & OLIVEROS, P.C.

5 /s/ E-filed 11/25/09

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15 *Attorneys for Plaintiff Love & Money, LLC*

16 *(Local Counsel)*

17 **CERTIFICATE OF SERVICE**

18 I HEREBY CERTIFY that on this 25<sup>th</sup> day of November, 2009, a true and correct copy of  
19 the foregoing **PLAINTIFF LOVE & MONEY, LLC's MOTION TO COMPEL DISCOVERY**  
20 **FROM PURE MANAGEMENT GROUP** was emailed by CMECF and delivered by regular mail  
21 to the following:

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